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September 8, 2021

BY ECF

The Honorable Margo K. Brodie
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: Federal Defenders of New York, Inc. v. Federal Bureau of Prisons, et al., No. 19
Civ. 660 (MKB)

Dear Chief Judge Brodie:

We write on behalf of the Federal Defenders to provide an update pursuant to the Court's order dated September 3, 2021.

Impending transfer of MCC inmates. Little progress has been made since the parties last appeared before Your Honor. We have not learned of any specific plans in place to address the majority of the issues we outlined in our last status report. *See* Doc. No. 218 at 1-2. This includes the cross-cutting issue of staffing, a problem now at the MDC, which will be exacerbated if a substantial proportion of the MCC's remaining population is transferred there. *See* Doc. Nos. 220, 220-1. We understand that Defendants must navigate certain union-related issues to either hire or transfer staff to a new facility. But staffing shortages are neither new to the MDC, nor, it seems, caused by the union. Union president Rhonda Barnwell has made the union's position clear:

Because we have no staff, some days there is no one assigned to a housing unit. Sometimes for eight hours there's no one. That's very dangerous. . . . The [Bureau of Prisons] is quite aware we've had several posts unmanned, and they've done absolutely nothing about it.¹

Absent a long-term commitment to providing the necessary staffing resources, legal access, as well as institutional safety and security, will remain at risk.

¹ Noah Goldberg, *Brooklyn federal jailers work 16-hour shifts amid prisoner influx as government shuts Jeffrey Epstein suicide lockup in Manhattan*, Daily News (Sept. 3, 2021), <https://www.nydailynews.com/new-york/ny-nyc-elected-officials-mdc-mcc-transfers-closing-jeffrey-epstein-20210903-sy4slespabfyjin6cnnhb3ralm-story.html>.

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We gather that the MDC has made progress with respect to installing new and/or additional VTC equipment but is still unable to say when its work will be complete, including in the East SHU, where VTC access is still unavailable.

Our understanding is that many of the discussions relating to the impending transfer do not involve the same BOP employees and counsel who have been attending mediation sessions. In hopes of discussing concerns and working through challenges with decisionmakers *before* decisions impacting legal access at MDC are made and implemented, we have requested that someone from Defendant BOP who is directly involved in transfer-related decisions attend mediation sessions in the next few weeks. Government counsel has declined that request. Cf. Local Rule 83.8(c)(2) (recognizing that the Court or mediator “may require the attendance at the mediation” of a representative “with authority to settle the matter and to bind the party” due to “the Court’s view that the principal values of mediation include affording litigants with an opportunity to articulate their positions and interests directly to the other parties”). But time is of the essence, as it has been reported that the transfer is likely to take place in October.² We request that the Court encourage the government to reconsider its position on having someone directly involved in developing the BOP’s transfer plans participate in mediation.

Urgent call and VTC requests. There has been an increase in requests for urgent legal calls and VTCs at both the MCC and MDC, and with it an increase in the problems in ensuring that those requests are accommodated. We are aware of multiple emails making such requests that have gone days without a response—and sometimes have received no response at all. Particularly with increased court activity expected for the next couple of months, we anticipate that the number of urgent requests will increase further. We have raised our concerns in mediation and hope the facilities are able to put systems in place so that no more urgent call and VTC requests fall through the cracks.

* * *

We thank the Court for its attention to these important issues.

Respectfully submitted,

/s/ Sean Hecker

Sean Hecker

cc: Counsel of Record (by ECF)
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² Noah Goldberg, *Brooklyn jailers work 16-hour shifts amid prisoner influx as government shuts Jeffrey Epstein suicide lockup in Manhattan*, Daily News (Sept. 3, 2021), <https://www.nydailynews.com/new-york/ny-nyc-elected-officials-mdc-mcc-transfers-closing-jeffrey-epstein-20210903-sy4slespabfyjjn6cnnhb3ralm-story.html>. We have been provided no information about the timing of the impending transfer.